

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

BENJAMIN CASE, JENNIFER KLEIN and MARK KUSHNEIR,

Plaintiffs,

-against-

THE CITY OF NEW YORK, CHIEF OF DEPARTMENT JOSEPH ESPOSITO, LIEUTENANT DAVID GROHT, SERGEANT LAWRENCE PAPOLA, OFFICER BENJAMIN ALMONTE, OFFICER DMITRY TVERDOKHLEB and OFFICER MICHAEL MALDONADO,

DECLARATION OF AMY ROBINSON IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

14-CV-9148 (AT)

Defendants.

----- X

Amy Robinson declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

I am a Special Assistant Corporation Counsel in the Office of Zachary Carter, Corporation Counsel of the City of New York, attorney for defendants, and as such, I am familiar with the facts stated below. I submit this declaration in support of defendants' Motion pursuant to Fed. R. Civ. P. 56.

1. Exhibit A is a copy of plaintiff's Amended Complaint filed September 9, 2015, docket entry number 41.

2. Exhibit B is a copy of defendants' Answer to the Amended Complaint filed April 13, 2017, docket entry number 75.

3. Exhibit C contains a copy of internet pages pertaining to OccupyWallSt.org., “November 17th International Day of Action,” D1347-1349. This document shows the “Call to Action,” put out by organizers of Occupy Wall Street (“OWS”) calling upon the 99 percent to participate in a national day of direct action by gathering at 7:00 a.m., before the ring of the New York Stock Exchange bell, to confront Wall Street.

4. Exhibit D contains excerpts of the deposition transcript of plaintiff Benjamin Case. Case testified that on November 17, 2011, he was involved in shutting down Wall Street as a protest action and understood “shutting down Wall Street” to mean clogging the streets and sidewalks in the Wall Street area.

5. Exhibit E contains excerpts of the deposition transcript of plaintiff Jennifer Klein. Klein testified that on November 17, 2011, “we were occupying the street in the same sense that I was not leaving” and “we occupied at Nassau and Pine Street about a block from the New York Stock Exchange.” Klein further testified that she decided that she was going to stay at that intersection until she was allowed to proceed with a march to the Stock Exchange.

6. Exhibit F contains excerpts of the deposition transcript of plaintiff Mark Kushneir. Kushneir testified that part of the protesting on November 17, 2011, included blocking streets or sidewalks.

7. Exhibit G contains excerpts of the deposition transcript of defendant Lawrence Papola.

8. Exhibit H contains excerpts of the deposition transcript of defendant Officer Benjamin Almonte.

9. Exhibit J contains excerpts of the deposition transcript of defendant Officer Dmitry Tverdokhleb.

10. Exhibit K contains excerpts of the deposition transcript of defendant Chief of Department Joseph Esposito.

11. Exhibit L contains excerpts of the deposition transcript of defendant Officer Michael Maldonado.

12. Exhibit M is video taken by NYPD TARU Detective Rivera. The video shows, *inter alia*, Case in a group standing, then sitting and finally laying in the intersection of Beaver and William Streets in downtown Manhattan. The video also shows the orders given to the crowd by Sgt. Papola using a loudspeaker, including Case, to disperse, which Case ignored. The video also shows Kushneir standing with a group holding large, painted cardboard boxes on the sidewalk at Broadway and Exchange Place in downtown Manhattan blocking all pedestrian traffic from building to curb. The video also shows Chief Joseph Esposito giving orders to the group, including Kushneir to disperse, which Kushneir ignored.

13. Exhibit N is video taken by NYPD TARU Detective Kilcoyne. The video shows, *inter alia*, Klein standing and then sitting in the intersection of Pine and Nassau Streets in downtown Manhattan. The video also depicts Lt. Groht giving at least fifteen orders to leave the street, which Klein ignored. The video also shows that the crowd, including Klein, blocking vehicular traffic.

14. Exhibit O contains a copy of a blog written by plaintiff Benjamin Case. Case blogged, “we clogged up Wall Street before the opening bell,” and “Wall Street brokers shouted at us on the 17th as we barred them from getting to work.”

15. Exhibit P contains copies of internet chats written by plaintiff Benjamin Case. Two days prior to the date of incident, Case stated in an internet chat to a friend that “the likelihood that I will be arrested on Thursday is high.”

16. Exhibit Q is a copy of Benjamin Case’s Criminal Court of the City of New York, Record of Criminal Action pertaining to the underlying September 17, 2011, criminal charges.

17. Exhibit R contains a copy of Benjamin Case’s Criminal Court Complaint pertaining to his arrest on November 17, 2011.

18. Exhibit S contains copies of e-mails sent by Jennifer Klein in which Klein stated, referring to her November 17, 2011, arrest, “I do feel we sort of made a collective decision to defend public streets and our rights to occupy them together.” Klein also e-mailed, “we just rather calmly and determinably decided we should hold the line together.”

19. Exhibit T is a copy of Jennifer Klein’s Criminal Court Complaint pertaining to her arrest on November 17, 2011.

20. Exhibit U is a copy of Mark Kushneir’s Criminal Court Complaint pertaining to his arrest on November 17, 2011.

21. Exhibit V contains a copy of Michael Maldonado’s memobook entries for September 17, 2011.

22. Exhibit W contains a copy of Michael Maldonado’s handwritten (“scratch”) arrest report for Mark Kushneir’s arrest on November 17, 2011.

23. Exhibit X contains a copy of Case's NYPD's On-Line Prisoner Arraignment form ("OLPA") showing that Case was in custody for 13 hours, 15 minutes—not the 15 to 20 hours claimed.

24. Exhibit Y contains a copy of Klein's NYPD OLPA form showing that Klein was in custody for 13 hours, 35 minutes—not the 15 to 20 hours claimed.

25. Exhibit Z contains a copy of Kushneir's NYPD OLPA form showing that Kushneir was in custody for 12 hours, 20 minutes—not the 15 to 20 hours claimed.

Dated: New York, New York
January 11, 2019

ZACHARY CARTER
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007
(212) 356-3518

By: _____/s/
Amy Robinson
Special Federal Litigation Division

TO: Gideon Oliver, Esq. (*via ECF*)
Attorney for Plaintiffs